

STEPHEN M. HAYES (SBN 83583)
shayes@hayesscott.com
STEPHEN P. ELLINGSON (SBN 136505)
sellingson@hayesscott.com
JAMIE A. RADACK (SBN 221000)
jradack@hayesscott.com
HAYES SCOTT BONINO ELLINGSON
GUSLANI SIMONSON & CLAUSE LLP
999 Skyway Road, Suite 310
San Carlos, CA 94070
Telephone: (650) 637-9100
Facsimile: (650) 637-9101

Attorneys for Defendant
STATE FARM GENERAL INSURANCE COMPANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DEBRA COHEN TUDOR,

Plaintiff,

vs.

STATE FARM GENERAL INSURANCE
COMPANY, an Illinois corporation; and
DOES 1 through 50, inclusive,

Defendants.

CASE NO. 4:22-cv-01113-HSG

**DEFENDANT STATE FARM GENERAL
INSURANCE COMPANY'S AMENDED
ANSWER TO COMPLAINT**

Defendant State Farm General Insurance Company hereby submits its amended answer to plaintiff's complaint as follows:

1. Answering the allegations of plaintiffs' paragraph 1, this answering defendant admits said allegations.
2. Answering the allegations of plaintiffs' paragraph 2, this answering defendant lacks sufficient information to admit or deny said allegations.
3. Answering the allegations of plaintiffs' paragraph 3, this answering defendant admits said allegations.
4. Answering the allegations of plaintiffs' paragraph 4, this answering defendant admits said allegations.
5. Answering the allegations of plaintiffs' paragraph 5, this answering defendant lacks

1 sufficient information to admit or deny said allegations.

2 6. Answering the allegations of plaintiffs' paragraph 6, this answering defendant
3 admits the insured property is located in Santa Clara, California and that plaintiff suffered alleged
4 losses in Santa Calara County. This answering defendant denies the remaining allegations.

5 7. Answering the allegations of plaintiffs' paragraph 7, this answering defendant
6 admits that the damages and losses plaintiff alleges to have suffered exceeds the jurisdictional
7 threshold of the Court.

8 8. Answering the allegations of plaintiffs' paragraph 8, this answering defendant
9 admits the plaintiff's insured property was covered by homeowner's insurance Policy No. 05-GL-
10 6089-6, form FP-7955 CA as modified by Endorsement FE-3422 and Amendatory Endorsement
11 FE-1386 effective March 30, 2020 to March 30, 2021 issued by State Farm ("the Policy"). This
12 answering defendant lacks sufficient information to admit or deny the remaining allegations.

13 9. Answering the allegations of plaintiffs' paragraph 9, this answering defendant
14 admits that the Policy provided Dwelling coverage with policy limits of \$655,200, Building Code
15 Upgrade coverage of \$163,800, Extended Replacement Cost coverage, Personal Property coverage,
16 and Loss of Use / Living Expense coverage.

17 10. Answering the allegations of plaintiffs' paragraph 10, this answering defendant
18 admits that plaintiff reported a water loss claim caused by water discharged from her dishwasher
19 that occurred in January 2021. This answering defendant lacks sufficient information to admit or
20 deny the remaining allegations.

21 11. Answering the allegations of plaintiffs' paragraph 11, this answering defendant
22 admits that plaintiff reported to State Farm that she called a plumber to stop the discharge of water
23 from the dishwasher. This answering defendant lacks sufficient information to admit or deny the
24 remaining allegations.

25 12. Answering the allegations of plaintiffs' paragraph 12, this answering defendant
26 denies said allegations.

27 13. Answering the allegations of plaintiffs' paragraph 13, this answering defendant
28 admits, subject to the terms and conditions of the Policy, that the Policy provided coverage for

1 damage to plaintiff's insured property as set forth in the Policy, which is accurately reflected. This
2 answering defendant denies any allegations that are inconsistent with the Policy.

3 14. Answering the allegations of plaintiffs' paragraph 14, this answering defendant
4 admits that the quoted portion of its letter of March 15, 2021 is accurately reflected. This
5 answering defendant lacks sufficient information to admit or deny the remaining allegations.

6 15. Answering the allegations of plaintiffs' paragraph 15, this answering defendant
7 admits that it received a photograph of the dishwasher cavity on or around March 12, 2021. This
8 answering defendant lacks sufficient information to admit or deny the remaining allegations.

9 16. Answering the allegations of plaintiffs' paragraph 14, this answering defendant
10 admits that the quoted portion of its letter of March 15, 2021 is accurately reflected. This
11 answering defendant lacks sufficient information to admit or deny the remaining allegations.

12 17. Answering the allegations of plaintiffs' paragraph 17, this answering defendant
13 admits that ServiceMaster was sent to the insured property to investigate the loss. This answering
14 defendant lacks sufficient information to admit or deny the remaining allegations.

15 18. Answering the allegations of plaintiffs' paragraph 18, this answering defendant lacks
16 sufficient information to admit or deny said allegations.

17 19. Answering the allegations of plaintiffs' paragraph 19, this answering defendant lacks
18 sufficient information to admit or deny said allegations.

19 20. Answering the allegations of plaintiffs' paragraph 20, this answering defendant lacks
20 sufficient information to admit or deny said allegations.

21 21. Answering the allegations of plaintiffs' paragraph 21, this answering defendant lacks
22 sufficient information to admit or deny said allegations.

23 22. Answering the allegations of plaintiffs' paragraph 22, this answering defendant lacks
24 sufficient information to admit or deny said allegations.

25 23. Answering the allegations of plaintiffs' paragraph 23, this answering defendant lacks
26 sufficient information to admit or deny said allegations.

27 24. Answering the allegations of plaintiffs' paragraph 24, this answering defendant
28 admits that RegasGroup issued a written report and lab finding which indicated that the allegedly

1 damaged kitchen flooring contained asbestos and the countertop above the allegedly damaged
2 cabinets contained lead, which required abatement by a licensed environmental hazard abatement
3 contractor. This answering defendant lacks sufficient information to admit or deny the remaining
4 allegations.

5 25. Answering the allegations of plaintiffs' paragraph 25, this answering defendant
6 admits that plaintiff contacted State Farm to request Loss of Use / Additional Living Expense
7 coverage. This answering defendant lacks sufficient information to admit or deny the remaining
8 allegations.

9 26. Answering the allegations of plaintiffs' paragraph 26, this answering defendant
10 admits that plaintiff submitted a remediation proposal from American Air Testing to State Farm,
11 which was more expensive than the proposal received from RegasGroup. This answering
12 defendant lacks sufficient information to admit or deny the remaining allegations.

13 27. Answering the allegations of plaintiffs' paragraph 27, this answering defendant
14 admits that the Policy does not specifically define "uninhabitable." This answering defendant lacks
15 sufficient information to admit or deny the remaining allegations.

16 28. Answering the allegations of plaintiffs' paragraph 28, this answering defendant
17 admits that on or about March 24, 2021, plaintiff's claim was assigned to Sharon Siu, and that State
18 Farm ultimately changed its coverage position. This answering defendant lacks sufficient
19 information to admit or deny the remaining allegations.

20 29. Answering the allegations of plaintiffs' paragraph 29, this answering defendant lacks
21 sufficient information to admit or deny said allegations.

22 30. Answering the allegations of plaintiffs' paragraph 30, this answering defendant lacks
23 sufficient information to admit or deny said allegations.

24 31. Answering the allegations of plaintiffs' paragraph 31, this answering defendant
25 admits Sharon Siu inspected the property on or about March 29, 2021 asked plaintiff to recount the
26 facts of the loss, and took measurements and photographs, and that the dishwasher was not
27 removed. This answering defendant lacks sufficient information to admit or deny the remaining
28 allegations.

1 32. Answering the allegations of plaintiffs' paragraph 32, this answering defendant
2 admits Sharon Siu inspected the property on or about March 29, 2021, noted an area of the kitchen
3 floor appeared to have water damage, and did not take moisture readings. This answering
4 defendant lacks sufficient information to admit or deny the remaining allegations.

5 33. Answering the allegations of plaintiffs' paragraph 33, this answering defendant lacks
6 sufficient information to admit or deny said allegations.

7 34. Answering the allegations of plaintiffs' paragraph 34, this answering defendant
8 admits said allegations.

9 35. Answering the allegations of plaintiffs' paragraph 35, this answering defendant
10 admits that the quoted portion of its letter of March 30, 2021 is accurately reflected. This
11 answering defendant lacks sufficient information to admit or deny the remaining allegations.

12 36. Answering the allegations of plaintiffs' paragraph 36, this answering defendant
13 admits that the letter of March 30, 2021 cites Policy exclusion provisions pertaining to mold and
14 that plaintiff does not appear to have made a claim for a loss relating to mold. This answering
15 defendant denies that it relied on the mold exclusions in the Policy to deny coverage for the claim.

16 37. Answering the allegations of plaintiffs' paragraph 37, this answering defendant
17 admits that the quoted portion of its letter of March 30, 2021 is accurately reflected. This answer
18 defendant denies that it never investigated the cause of the water discharge or nature of the water
19 damage, or deterioration, or that it lacked facts to support its denial of coverage. This answering
20 defendant lacks sufficient information to admit or deny the remaining allegations.

21 38. Answering the allegations of plaintiffs' paragraph 38, this answering defendant
22 admits the denial letter dated March 30, 2021 cited to the one-year suit provision within the Policy,
23 and that the Policy included Endorsement FE-1386, which is accurately reflected. This answering
24 defendant lacks sufficient information to admit or deny the remaining allegations.

25 39. Answering the allegations of plaintiffs' paragraph 39, this answering defendant lacks
26 sufficient information to admit or deny said allegations.

27 40. Answering the allegations of plaintiffs' paragraph 40, this answering defendant
28 denies said allegations.

1 41. Answering the allegations of plaintiffs' paragraph 41, this answering defendant
2 incorporates the preceding paragraphs by reference as though fully set forth herein.

3 42. Answering the allegations of plaintiffs' paragraph 42, this answering defendant
4 denies said allegations.

5 43. Answering the allegations of plaintiffs' paragraph 43, this answering defendant lacks
6 sufficient information to admit or deny said allegations.

7 44. Answering the allegations of plaintiffs' paragraph 44, this answering defendant lacks
8 sufficient information to admit or deny said allegations.

9 45. Answering the allegations of plaintiffs' paragraph 45, this answering defendant
10 denies said allegations.

11 46. Answering the allegations of plaintiffs' paragraph 46, this answering defendant
12 denies said allegations.

13 47. Answering the allegations of plaintiffs' paragraph 47, this answering defendant
14 denies said allegations.

15 48. Answering the allegations of plaintiffs' paragraph 48, this answering defendant
16 denies said allegations.

17 49. Answering the allegations of plaintiffs' paragraph 49, this answering defendant
18 denies said allegations.

19 50. Answering the allegations of plaintiffs' paragraph 50, this answering defendant
20 incorporates the preceding paragraphs by reference as though fully set forth herein.

21 51. Answering the allegations of plaintiffs' paragraph 51, this answering defendant
22 admits that the Policy includes an implied covenant of good faith and fair dealing. This answering
23 denies the remaining allegations.

24 52. Answering the allegations of plaintiffs' paragraph 52, this answering defendant
25 denies said allegations.

26 53. Answering the allegations of plaintiffs' paragraph 53, this answering defendant
27 denies said allegations.

28 54. Answering the allegations of plaintiffs' paragraph 54, this answering defendant

1 denies said allegations.

2 55. Answering the allegations of plaintiffs' paragraph 55, this answering defendant
3 denies said allegations.

4 56. Answering the allegations of plaintiffs' paragraph 56, this answering defendant
5 denies said allegations.

6 57. Answering the allegations of plaintiffs' paragraph 57, this answering defendant lacks
7 sufficient information to admit or deny said allegations.

8 **AFFIRMATIVE DEFENSES**

9 AS A FIRST, SEPARATE DEFENSE TO THE COMPLAINT ON FILE HEREIN, AND
10 TO EACH ALLEGED CAUSE OF ACTION CONTAINED THEREIN, this answering defendant
11 alleges that said Complaint fails to state facts sufficient to constitute a cause of action against this
12 answering defendant. The Complaint alleges that the loss was caused by water discharged from
13 plaintiff's dishwasher, which occurred in January 2021, but was not reported until March 2021.
14 Plaintiff's the loss was not a covered accidental direct physical loss under her policy because it was
15 the result of wear, tear, or latent defect of the dishwasher and or its plumbing which resulted in
16 continuous and repeated leakage of water, which is excluded under the policy. Therefore, State
17 Farm did not breach the contract when it denied plaintiff's claim, and it cannot be held liable for
18 breach of contract or breach of the implied covenant of good faith and fair dealing. In addition,
19 State Farm, promptly and reasonably investigated plaintiff's loss and had reasonable grounds to
20 deny her claim.

21 AS A SECOND, SEPARATE DEFENSE TO THE COMPLAINT ON FILE HEREIN,
22 AND TO EACH ALLEGED CAUSE OF ACTION CONTAINED THEREIN, this answering
23 defendant alleges plaintiff's claims are barred because plaintiff failed to comply with the terms and
24 conditions of the insurance policy or policies at issue in the Complaint, and because said policy or
25 policies afforded no coverage or coverage was barred by one or more exclusions, policy limits or
26 deductibles. The loss was caused by water discharged from plaintiff's dishwasher, which occurred
27 in January 2021, but was not reported until March 2021. Thus, plaintiff failed to report the loss in a
28 timely manner as required by the policy. Plaintiff's the loss was not a covered accidental direct

1 physical loss under her policy because it was the result of wear, tear, or latent defect of the
2 dishwasher and or its plumbing which resulted in continuous and repeated leakage of water, which
3 is excluded under the policy.

4 AS A THIRD, SEPARATE DEFENSE TO THE COMPLAINT ON FILE HEREIN, AND
5 TO EACH ALLEGED CAUSE OF ACTION CONTAINED THEREIN, this answering defendant
6 alleges that plaintiff has waived and is estopped and barred from alleging the matters set forth in the
7 Complaint. The loss was caused by water discharged from plaintiff's dishwasher, which occurred
8 in January 2021, but was not reported until March 2021. Thus, plaintiff failed to report the loss in a
9 timely manner as required by the policy.

10 AS A FOURTH, SEPARATE DEFENSE TO THE COMPLAINT ON FILE HEREIN,
11 AND TO EACH ALLEGED CAUSE OF ACTION CONTAINED THEREIN, this answering
12 defendant alleges that at all times and places mentioned in the Complaint herein, plaintiff failed to
13 mitigate the amount of her damages. The damages claimed by plaintiff could have been mitigated
14 by due diligence on her part or by one acting under similar circumstances. Plaintiff's failure to
15 mitigate is a bar to her recovery under the Complaint. The loss was caused by water discharged
16 from plaintiff's dishwasher, which occurred in January 2021, but was not reported until March
17 2021. The Complaint alleges that plaintiff did not use the dishwasher after January 2021. The
18 Complaint does not allege that plaintiff had the dishwasher removed in January 2021 to inspect or
19 mitigate the alleged water damage.

20 AS A FIFTH, SEPARATE DEFENSE TO THE COMPLAINT ON FILE HEREIN, AND
21 TO EACH ALLEGED CAUSE OF ACTION CONTAINED THEREIN, this answering defendant
22 alleges that the injuries allegedly sustained by plaintiff were either wholly or in part caused by
23 plaintiff or persons, firms, corporations or entities other than this answering defendant. The loss
24 was caused by water discharged from plaintiff's dishwasher, which occurred in January 2021, but
25 was not reported until March 2021. The Complaint alleges that plaintiff hired a plumber to repair
26 the faulty dishwasher. The Complaint does not allege that plaintiff had the dishwasher removed in
27 January 2021 to inspect or mitigate the alleged water damage.

28 AS A SIXTH, SEPARATE DEFENSE TO THE COMPLAINT ON FILE HEREIN, AND

1 TO EACH ALLEGED CAUSE OF ACTION CONTAINED THEREIN, this answering defendant
 2 alleges that at all times and places mentioned in the Complaint herein, plaintiff failed to perform
 3 certain conditions precedent that were imposed upon plaintiff by contract. The non-performance of
 4 said conditions excused defendant's obligations under the contract. The loss was caused by water
 5 discharged from plaintiff's dishwasher, which occurred in January 2021, but was not reported until
 6 March 2021. Thus, plaintiff failed to report the loss in a timely manner as required by the policy.

7 AS A SEVENTH, SEPARATE DEFENSE TO THE COMPLAINT ON FILE HEREIN,
 8 AND TO EACH ALLEGED CAUSE OF ACTION CONTAINED THEREIN, this answering
 9 defendant alleges that plaintiff cannot assert any contractual claims set forth in the Complaint
 10 because plaintiff materially breached said contract. The loss was caused by water discharged from
 11 plaintiff's dishwasher, which occurred in January 2021, but was not reported until March 2021.
 12 Thus, plaintiff failed to report the loss in a timely manner as required by the policy.

13 AS AN EIGHTH, SEPARATE DEFENSE TO THE COMPLAINT ON FILE HEREIN,
 14 AND TO EACH ALLEGED CAUSE OF ACTION CONTAINED THEREIN, this answering
 15 defendant alleges that plaintiffs' Complaint, to the extent that it seeks exemplary or punitive
 16 damages pursuant to section 3294 of the Civil Code, violates defendant's rights to procedural due
 17 process under the Fourteenth Amendment of the United States Constitution, and the Constitution of
 18 the State of California, and therefore fails to state a cause of action upon which either punitive or
 19 exemplary damages can be awarded. The Complaint alleges that the loss was caused by water
 20 discharged from plaintiff's dishwasher, which occurred in January 2021, but was not reported until
 21 March 2021. Plaintiff's the loss was not a covered accidental direct physical loss under her policy
 22 because it was the result of wear, tear, or latent defect of the dishwasher and or its plumbing which
 23 resulted in continuous and repeated leakage of water, which is excluded under the policy.
 24 Therefore, State Farm did not breach the contract when it denied plaintiff's claim, and it cannot be
 25 held liable for breach of contract, breach of the implied covenant of good faith and fair dealing or
 26 punitive damages. Nor is there any evidence, let alone clear and convincing evidence that supports
 27 a finding that State Farm acted with fraud, oppression or malice as required to support a claim for
 28 punitive damages.

1 AS A NINTH, SEPARATE DEFENSE TO THE COMPLAINT ON FILE HEREIN, AND
 2 TO EACH ALLEGED CAUSE OF ACTION CONTAINED THEREIN, this answering defendant
 3 alleges that plaintiffs' Complaint, to the extent that it seeks punitive or exemplary damages
 4 pursuant to section 3294 of the Civil Code, violates defendant's rights to protection from "excessive
 5 fines" as provided in the Eighth Amendment of the United States Constitution and Article I, Section
 6 17, of the Constitution of the State of California, and violates defendant's rights to substantive due
 7 process as provided in the Fifth and Fourteenth Amendments of the United States Constitution and
 8 the Constitution of the State of California, and therefore fails to state a cause of action supporting
 9 the punitive or exemplary damages claimed. The Complaint alleges that the loss was caused by
 10 water discharged from plaintiff's dishwasher, which occurred in January 2021, but was not reported
 11 until March 2021. Plaintiff's the loss was not a covered accidental direct physical loss under her
 12 policy because it was the result of wear, tear, or latent defect of the dishwasher and or its plumbing
 13 which resulted in continuous and repeated leakage of water, which is excluded under the policy.
 14 Therefore, State Farm did not breach the contract when it denied plaintiff's claim, and it cannot be
 15 held liable for breach of contract or breach of the implied covenant of good faith and fair dealing.
 16 Nor is there any evidence, let alone clear and convincing evidence that supports a finding that State
 17 Farm acted with fraud, oppression or malice as required to support a claim for punitive damages.

18 WHEREFORE, this answering defendant pray for judgment as follows:

- 19 1. That plaintiff takes nothing by her Complaint;
- 20 2. For costs of suit incurred herein; and
- 21 3. For such other and further relief as the Court deems proper.

22 Dated: April 28, 2022

HAYES SCOTT BONINO ELLINGSON
 GUSLANI SIMONSON & CLAUSE LLP

23 By 

24 STEPHEN M. HAYES
 25 STEPHEN P. ELLINGSON
 26 JAMIE A. RADACK
 27 Attorneys for Defendant
 28 STATE FARM GENERAL INSURANCE
 COMPANY